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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO. 82-6089

TIMOTHY EUGENE MORRIS,

PETITIONER,

V.

STATE OF TENNESSEE,

RESPONDENT.

ON PETITION FOR THE WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether voluntary statements made by petitioner to police before and after his arrest were taken in accordance with petitioner's constitutional rights, and were properly admitted into evidence?

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OPINION BELOW

The opinion of the Supreme Court of Tennessee is reported at 641 S.W.2d 883.

JURISDICTION

Petitioner seeks review of the judgment of the Supreme Court of Tennessee, affirming his conviction of murder in the first degree and his sentence of death. The judgment was entered on October 12, 1982, and a petition for rehearing was denied on November 29, 1982. The Petition for the Writ of Certiorari has been timely filed with this Court, and was received by the respondent on January 26, 1983.

Petitioner seeks review pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

The victim, Hunter Tait, was a resident of Arkansas and made a living manufacturing and selling ornamental objects. He met petitioner in Nashville, Tennessee, in June of 1980, and employed petitioner to assist him as he traveled between arts and craft shows. Tait was last seen on the morning of June 30, 1980, accompanied by petitioner, driving Tait's truck out of Townsend, Tennessee. Tait had sold several hundred dollars' worth of merchandise, and still had valuable inventory in his truck.

The next morning, petitioner arrived by himself in a town in North Carolina, driving Tait's truck and giving away inventory from the truck. He later drove to Florida where he cashed several checks on Tait's bank account, making the checks payable to himself and forging Tait's signature.

Meanwhile, Tait's mother, who lived in Florida, heard that her son had not returned home to Arkansas as scheduled, and discovered that someone had been forging checks on Tait's account. A missing person report was filed, and the checks were traced to Nassau County, Florida, where Officer Henry Hines began looking for petitioner in the hope of finding the missing Tait. Petitioner was found at a trailer park in Jacksonville on August 5, 1980, and the officers identified themselves to him.

Officer Hines told petitioner that he was "in no form of trouble" and they were only trying to find out where Tait was. The petitioner stated that he had known Tait for about six months, and that Tait had been running out of money. Petitioner stated that he had bought Tait's truck for $50.00 about two weeks earlier, and that they had split up. Petitioner indicated that Tait had owed him money, and was mailing checks to petitioner in Florida. Officer Hines later discovered several discrepancies in petitioner's story, but was not able to find petitioner again. On August 6, Officer Hines put a capias on the computer to have petitioner picked up for forgery.

Meanwhile, Tait's body had been discovered in Greene County, Tennessee, on July 6, 1980. It was not identified, however, until August 5, 1980, and only then was Agent Robert Baird of the Tennessee Bureau of Investigation able to contact Florida authorities. Agent Baird collected more evidence and presented a case against petitioner to the Greene County Grand Jury, which charged petitioner by presentment on September 2, 1980. Petitioner was arrested in Texas the following day.

On September 6, 1980, Agent Baird photographed and fingerprinted petitioner, and began to interview him. Agent Baird advised petitioner of his Miranda rights, and petitioner waived those rights and made a statement. Agent Baird testified that petitioner never requested an attorney. Petitioner's statement was another contradictory account of his dealings with Tait.

Petitioner filed motions to suppress both statements before trial, and separate evidentiary hearings were held in the state trial court. The trial judge found that when petitioner made his statement to Officer Hines in Florida, he was not subjected to custodial interrogation and was not even a suspect at that point. The trial judge further found that the statement given to Agent Baird in Tennessee was made after petitioner had been fully and adequately advised of his rights and had executed a voluntary waiver of those rights. The judge further found as a fact that petitioner had not requested counsel.

The Tennessee Supreme Court found that the record sustained the trial judge's findings, and held that the statements had been properly admitted. The court further noted that the statements themselves were largely cumulative of the testimony of other witnesses, and were not directly incriminatory of petitioner. State v. Morris, 641 S.W.2d 883, 888 (Tenn. 1982).

ARGUMENT

PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY THE TAKING OF THE STATEMENTS, AND THEY WERE PROPERLY ADMITTED INTO EVIDENCE.

A. Petitioner was not "in custody" when he made his statement to Officer Hines in Florida, and the record supports the finding that the statement was made voluntarily.

The special protections of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), come into play only when a criminal defendant is subjected to the peculiarly coercive impact of a "custodial" police interrogation. This was defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at 706. Thus, unless the law enforcement officials have by their actions created an unusually coercive situation, a simple interview in a person's home or even at a police station does not require Miranda warnings if the person is free to leave. See Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977); Beckwith v. United States, 425 U.S. 341, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976).

In the instant case, petitioner was approached by the officers in Florida at a trailer home where he was staying. Officer Hines explained to petitioner that he was not suspected of wrongdoing, and that the police were merely trying to locate a missing person. Petitioner was free to leave, and subsequently did so. Furthermore, there was substantial evidence that petitioner's statements were given voluntarily. Officer Hines testified that although petitioner appeared to be tired, he was alert and coherent, and was not intoxicated at the time.

This evidence supports the state court findings that petitioner was not "in custody" for Miranda purposes, and that his statement was given voluntarily. This case presents no more than a conflict as to factual determinations, a conflict which has been resolved by the state courts and which need not be reviewed by this Court.

B. Petitioner's statement to Agent Baird in Tennessee was made after a knowing and voluntary waiver of his rights.

While the State has a heavy burden of proving that a defendant has knowingly and intelligently waived his rights after receiving the Miranda warnings, the issue of the voluntariness of the waiver is a factual determination to be made by the trial judge. The execution of the written waiver of rights form is strong proof of a voluntary waiver. North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979); Taque v. Louisiana, 444 U.S. 469, 100 S.Ct. 652, 62 L.Ed.2d 622 (1980).

In the instant case, the trial judge's finding

that petitioner knowingly and intelligently waived his rights and voluntarily made the statement was fully supported by the record. Agent Baird testified that in addition to acknowledging his rights and signing the waiver form, petitioner never requested that an attorney be present and was not coerced in any way before making his statement. The trial judge accredited this testimony. Petitioner's refusal to sign a condensation of the statement was a minor fact to be considered, but did not preponderate against the circumstances which established waiver and voluntariness.

Once again, petitioner has simply presented a factual controversy which was resolved by the lower courts, and he has not presented a novel legal or factual situation requiring review by this Court.

CONCLUSION

For these reasons, the State of Tennessee respectfully requests that the petition for the writ of certiorari be DENIED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first class U.S. Mail, postage prepaid, to Mr. William H. Bell, 101 West Depot Street, Greeneville, TN 37743, this the 18th day of February, 1983.

WAYNE E. UHL
Assistant Attorney General